

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Charles McCoy,

Plaintiff,

v.

Case No. 07-15097

Honorable Sean F. Cox

Jackson Police Department, *et al.*,

Defendants.

ORDER

Acting *pro se*, Plaintiff filed this action on November 30, 2007, against the following named Defendants: “Chief of Police and the City of Jackson, Michigan.” (Docket Entry No. 1).

On May 5, 2008, the following motion was filed by Defense Counsel: “Defendant Chief of Police’s Motion to Dismiss Pursuant to FED. R. CIV. P. 4(m), 12(b)(2) and/or 12(b)(4).” (Docket Entry No. 17).

In that motion, defense counsel notes that while the case caption lists only “Chief of Police” and “the City of Jackson, Michigan” as Defendants in this action, the body of Plaintiff’s *pro se* complaint references allegations against Jackson Police Chief Ervin Portis (“Portis”). The motion indicates that Portis has never been served with the complaint and summons in this action. It states that Portis left the City of Jackson Police Department in September 2007, when he accepted the position of City Administrator for the City of Plattsmouth, Nebraska. It notes that while Jackson City attorney Julius Giglio (“Giglio”) accepted service of Plaintiff’s complaint on behalf of the city, and that current City of Jackson Police Chief Matthew Heins (“Heins”) accepted service on behalf of the Department/Chief of Police, neither Giglio nor Heins had any authority to accept service on behalf of Portis. Defense counsel requests that, to the

extent that Plaintiff has named Portis as a Defendant in this action, the Court dismiss Portis from this action for failure to serve him in a timely manner.

Federal Rule of Civil Procedure 4(m) governs the time limit for service of process on a defendant. Its relevant language provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

FED. R. CIV. P. 4(m).

On May 15, 2008, this Court sent written notice to the parties advising that Defense Counsel had filed the above motion and scheduling that motion to be heard by the Court on July 10, 2008. (Docket Entry No. 18).

This Court issued a Show Cause Order on June 16, 2008, requiring Plaintiff to show cause in writing, no later than June 30, 2008, why the pending motion filed by Defense Counsel should not be granted.

Plaintiff filed a response to the motion on June 30, 2008, in which he indicates that he intends to litigate this case and states that he has experienced some health problems that prevented him from complying with deadlines in this case. (Docket Entry No. 20). Plaintiff's response, however, does not indicate whether Plaintiff intended to name Portis as a Defendant in this action.

The Court hereby DENIES, WITHOUT PREJUDICE, Defendant's Motion to Dismiss. The Court ORDERS that, if Plaintiff intends to proceed with a claim against Portis in this action, Plaintiff shall so advise the Court, in writing, no later than July 25, 2008. At that time, Plaintiff must also provide the Court with the full name and current address for Portis so that service can

be processed. If Plaintiff fails to provide the requested information to the Court by July 25, 2008, Portis shall be dismissed from this action pursuant to Rule 4(m).

IT IS SO ORDERED.

S/ Sean F. Cox
Sean F. Cox
United States District Judge

Date: July 14, 2008

I hereby certify that on July 14, 2008, a copy of the foregoing document was served upon counsel of record by electronic means and by First Class Mail upon:

Charles McCoy
207 Stewart
Apt H-1
Jackson, MI 49201

S/ Jennifer Hernandez
Case Manager